



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0730]

RIN 1625-AA00

Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay,
Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent safety zones on Lake Erie near Sandusky, OH that will be enforced two consecutive mornings annually during the first or second weekend in September. This is intended to restrict vessel traffic during the swim portion of the Revolution 3 Triathlon in Lake Erie and Sandusky Bay, Sandusky, OH, and is necessary to protect participants, spectators, and vessels from the hazards associated with a triathlon event.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0730. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 Ian Fallon, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6046, e-mail Ian.M.Fallon@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Regulatory History and Information

The Coast Guard published two TFRs both entitled Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH in the Federal Register for this event on September 13, 2010 (75 FR 55477) and September 8, 2011 (76 FR 55564). Because this event will recur annually, the Captain of the Port

Detroit decided to establish permanent safety zones and thus, alleviate the need to publish TFRs in the future.

On August 16, 2012, the Coast Guard published an NPRM entitled Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH in the Federal Register (77 FR 49401) and again on June 14, 2013, the Coast Guard published an NPRM with the same proposed regulatory text (78 FR 35789). We did not receive any comments in response to the proposed rule after either publication. No public meeting was requested and none was held.

B. Basis and Purpose

Each year, the Revolution 3 Triathlon occurs at Cedar Point near Sandusky, OH. This event occurs for two consecutive days during the first or second week of September. During the first leg of the event, participants enter the water and swim along a predetermined course. While the primary course is on the eastern side of Cedar Point, an alternate location is on the western side of Cedar Point, in the vicinity of the Cedar Point Marina in the event of inclement weather. The likely combination of large numbers of inexperienced recreational boaters, possibly varying lake conditions and large number of swimmers in the water could easily result in serious injuries or fatalities. Thus, the Captain of the Port Detroit is establishing a permanent safety zone in the vicinity of the

primary and alternate swimming courses to protect against injuries and fatalities.

C. Discussion of Comments, Changes and the Final Rule

As noted, we received no comments on the 2012 (77 FR 49401) or 2013 (78 FR 35789) NPRMs, and we didn't make any substantive changes from the location or enforcement periods. We did, however, place these safety zones in the existing 33 CFR 165.941, which has 59 other safety zones for annual events in the Captain of the Port Detroit Zone, instead of creating a separate § 165.917.

As suggested above, the safety zones created by this rule are intended to ensure the safety of participants and of the public and vessels during the Revolution 3 Triathlon. These safety zones will be enforced annually on two consecutive days during the first or second weekend of September. On each day, it is expected that these safety zones will be enforced from 6:50 a.m. until 10 a.m. The exact dates and times of enforcement, however, will be determined annually and the Captain of the Port will issue a Notice of Enforcement to notify the public.

The safety zone created by this rule for the primary race course encompasses all waters of Lake Erie, Sandusky Bay, Cedar Point, OH within a line starting at position 41-29'-00.04"N 082-40'-48.16"W to 41-29'-19.28"N 082-40'-38.97"W to 41-29'-02.51"N

082-40'-20.82"W to 41-28'-45.52"N 082-40'-35.75"W, and then following the shoreline to the point of origin. These coordinates are North American Datum of 1983 (NAD 83). In the event that weather requires triathlon organizers to change the locations of the swimming leg, the alternate race course safety zone will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41-28'-38.59"N 082-41'-10.51"W and 41-28'-17.25"N 082-40'-54.09"W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones established by this rule will be enforced. Such means will include a notice of enforcement published annually in the Federal Register, and consistent with 33 CFR 165.7(a), may include, among other things, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if the enforcement of these safety zones in this section is cancelled prematurely.

Entry into, transiting, or anchoring within these safety zones during the period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated

representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable

waters. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie during the period that either of the safety zones is being enforced.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they

can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in FOR FURTHER INFORMATION CONTACT section, above

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law

or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and

recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.941 by adding paragraph (a)(60) to read as follows:

§ 165.941 Safety Zones; Annual Events in the Captain of the Port Detroit Zone.

(a) * * *

(60) Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar

Point, OH--

(i) Locations. All waters of Lake Erie within positions 41-29'-00.04"N 082-40'-48.16"W to 41-29'-19.28"N 082-40'-38.97"W to 41-29'-02.51"N 082-40'-20.82"W to 41-28'-45.52"N 082-40'-35.75"W then following the shoreline to the point of origin. In the event that weather requires triathlon organizers to change the locations of the swimming leg, the safety zones will alternatively encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41-28'-38.59"N 082-41'-10.51"W and 41-28'-17.25"N 082-40'-54.09"W (NAD 83) running adjacent to the Cedar Point Marina.

(ii) Enforcement period: Two consecutive mornings during the first or second weekend in September. Exact dates and times will be determined annually and the Captain of the Port will publish a Notice of Enforcement to inform the public.

Dated: **January 22, 2014**

J.E. OGDEN
Captain, U.S. Coast Guard
Captain of the Port Detroit

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